

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 OAKLAND DIVISION  
4

5 WELLS FARGO BANK, N.A., as  
6 TRUSTEE FOR THE CLARA POPPIC  
TRUST,

7 Plaintiff,

8 vs.

9 KENNETH G. RENZ, et al.,

10 Defendants.  
11

Case No: C 08-02561-SBA

**ORDER DENYING STIPULATED  
REQUEST TO EXTEND FACT AND  
EXPERT DISCOVERY DEADLINES**

Dkt. 291

12 AND RELATED ACTIONS.  
13

14 Plaintiff commenced this action on May 21, 2008. This action arises primarily under  
15 the federal Comprehensive Environmental Response, Compensation, and Liability Act  
16 (“CERCLA”). Plaintiff brings claims under CERCLA and related statutes, as well as common  
17 law tort claims, against the Defendants. Also at issue are related counter-claims and cross-  
18 claims filed by various parties.

19 On June 22, 2009, the Court issued an Order for Pretrial Preparation, setting forth the  
20 following relevant deadlines: a June 30, 2010 fact discovery deadline; a June 30, 2010 expert  
21 discovery deadline; and a September 14, 2010 motion hearing deadline. Dkt. 174. That Order  
22 also scheduled a December 14, 2010 pretrial conference and a January 10, 2011 trial date. Id.

23 On April 27, 2010, the Court granted the parties’ stipulated request to extend certain  
24 pretrial deadlines, continuing the fact discovery deadline to December 30, 2010 and the motion  
25 hearing deadline to March 15, 2011. Dkt. 251. The Court also continued the pretrial  
26 conference to June 14, 2011 and the trial date to June 20, 2011. Id.

27 On November 15, 2010, the Court granted the parties’ further stipulated request to  
28 extend certain pretrial deadlines, continuing the expert discovery deadline to February 25, 2011

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1 and the motion hearing deadline to April 26, 2011. Dkt. 270. One basis for the parties' request  
2 was that a brief continuance would "facilitate further settlement discussions." Id. at 2.

3 On December 28, 2010, the Court granted the parties' stipulated request for a further  
4 continuance of certain pretrial deadlines, continuing the fact discovery deadline to February 25,  
5 2011, and continuing the deadline for exchange of rebuttal expert reports from January 7, 2011  
6 to February 1, 2011. Dkt. 276. Again, the parties represented to the Court that a continuance  
7 would "facilitate further settlement discussions." Id. at 2.

8 Now, the parties have filed an additional stipulated request, seeking to extend the fact  
9 discovery deadline to March 31, 2011 and the expert discovery deadline to April 15, 2011.  
10 Dkt. 291. As indicated, the motion hearing deadline in this matter is April 26, 2011, and the  
11 pretrial conference is scheduled for June 14, 2011 and trial is scheduled for June 20, 2011.

12 Where, as here, a court already has entered a pretrial scheduling order, consideration of  
13 a request to amend the order is not limited to Federal Rule of Civil Procedure 15(a), but must  
14 first pass muster under Federal Rule of Civil Procedure 16. See Johnson v. Mammoth  
15 Recreations, Inc., 975 F.2d 604, 608 (9th Cir. 1992). Rule 16 provides that deadlines  
16 established in a case management order may "be modified only for good cause[.]"

17 Fed.R.Civ.P. 16(b)(4). "Good cause" exists when a deadline "cannot reasonably be met  
18 despite the diligence of the party seeking the extension." Johnson, 975 F.2d at 609 (citation  
19 omitted). Thus, "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the  
20 party seeking the amendment." Id.; see also Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294  
21 (9th Cir. 2000). Where the moving party has not been diligent, the inquiry ends and the motion  
22 should be denied. Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002);  
23 Johnson, 975 F.2d at 609.

24 In this case, the parties filed the instant request to further continue the fact and expert  
25 discovery deadlines on February 23, 2011. Dkt. 291. The sole basis for their request is that the  
26 parties "believe that a brief continuance of the deadlines relating to expert witness depositions  
27 will facilitate further settlement discussions." Dkt. 291 at 3. Also, the parties indicate that a  
28 further mediation session is scheduled for February 24, 2011. However, it appears that, to date,

1 this matter has not settled, as the Court has not received a notice of settlement from the parties.  
2 Moreover, the parties have failed to explain why they otherwise require yet another extension  
3 of the fact and expert discovery deadlines, particularly in view of the multiple continuances of  
4 the deadlines that have been granted previously, and which have not lead to settlement, and  
5 especially given that this matter has been pending since May 21, 2008. For instance, the  
6 parties have not described their diligence in pursuing discovery or why the current deadlines  
7 are inadequate despite such diligence. At bottom, the parties have failed to show good cause  
8 for granting their request under Rule 16. Accordingly,

9 IT IS HEREBY ORDERED THAT the parties' stipulated request to extend the fact and  
10 expert discovery deadlines is DENIED. This Order terminates Docket 291.

11 IT IS SO ORDERED.

12 Dated: March 1, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge